

**United Parcel Service and Highway and Local
Motor Freight Employees, Local Union No.
677, a/w International Brotherhood of Team-
sters, AFL-CIO. Case 26-CA-14618**

September 30, 1993

ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On December 7, 1992, Administrative Law Judge Hubert E. Lott of the National Labor Relations Board issued a decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. Exceptions to the judge's decision were due on January 4, 1993. On December 18, 1992, the General Counsel requested an extension of time to file exceptions to January 21, 1993, and on that date the General Counsel filed exceptions and a brief.

Pursuant to Section 102.46(d)(1) of the Board's Rules and Regulations, answering briefs in the instant case were due on February 4, 1993. On February 8, 1993, the Respondent's answering brief, postmarked February 5, 1993, was received by the Board. By letter dated February 9, 1993, Respondent's answering brief was rejected as untimely.

On February 16, 1993, the Respondent's counsel filed with the Board in Washington, D.C., a motion to file its answering brief under Section 102.111(c), contending that he did not receive the General Counsel's exceptions until January 22, 1 day after the due date, that under the Rules, he is entitled to 14 days in which to file an answering brief, that he did not receive the exceptions until 1 day into the 14-day period in which to file an answering brief, and that counsel believes, therefore, "that he had until February 5, 1993 within which to postmark the answering brief, that no party will be prejudiced by acceptance thereof, and that the

Board should, therefore, grant the appeal and accept Respondent's brief out-of-time."

Having duly considered the matter, the Board has decided to deny the Respondent's appeal. The Respondent does not dispute that, if it thought it needed more than the allowed time, it had ample opportunity following receipt of the General Counsel's exceptions to request an extension of time. Rather, it argues that under its misreading of the rules as to when the time started running for filing of its response, it believed that a brief postmarked on February 5 would be timely. The question for the Board, then, is whether such a misreading of the Board's Rules amounts to excusable neglect within the meaning of Section 102.111(c). We find that it does not, because to find that misreading the time limitation rules is excusable neglect would be, in effect, to make the Rules a nullity. See *NLRB v. Washington Star Co.*, 732 F.2d 974, 977 (D.C. Cir. 1984). This we decline to do.¹

IT IS ORDERED that the Respondent's motion to file brief under Section 102.111(c) is denied.

MEMBER DEVANEY, dissenting.

Section 102.121 of the Board's Rules and Regulations provides that our rules and regulations "shall be liberally construed to effectuate the purposes and provisions of the Act." The underlying policy consideration of the Board's changes to our filing requirements was to encourage decisions on substance rather than form. In these circumstances, and noting further that the Respondent's brief was postmarked the date after the due date, I believe that the Respondent's brief should be accepted.

¹ The Respondent misread a clear rule. Sec. 102.46(d)(1) provides that an answering brief can be filed within 14 days "from the last date on which exceptions and any supporting brief may be filed." Thus, the 14 days began to run on January 21, and the answer was due on February 4.